

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

RCRev..No. 358 of 2013 ()

ORDER DTD.23.8.2013 IN IA.NO.773/13 IN RCA.78/12 OF RENT CONTROL
APPELLATE AUTHORITY (1 ADDL. DISTRICT COURT), ERNAKULAM

AGAINST THE ORDER IN RCP 80/2010 of RENT CONTROL COURT (III ADDL.
MUNSIFF COURT) ERNAKULAM DATED 14-03-2012

PETITIONERS/ PETITIONERS/ RESPONDENTS:

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1. SUMATHY, WIFE OF LATE LAKSHMANAN, AGED 71 YEARS
CHAKKUNGAL HOUSE, CHAKKUNGAL ROAD, PALARIVATTOM
KOCHI 25
 2. VISWANATHAN C.L, AGED 53 YEARS
S/O LATE LATE LAKSHMANAN, CHAKKUNGAL HOUSE
CHAKKUNGAL ROAD, PALARIVATTOM, KOCHI 25
 3. VINOD C.L, AGED 41 YEARS
S/O LATE LATE LAKSHMANAN, CHAKKUNGAL HOUSE
CHAKKUNGAL ROAD, PALARIVATTOM, KOCHI 25
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
VISWANATHAN C.L.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SMT.ASHA BABU
SMT.G.ASHWINI
SRI.M.MANOJKUMAR (CHELAKKADAN)
SMT.AMMU CHARLES
SRI.K.T.SIDHIQ

RESPONDENT(S)/RESPONDENT/ APPELLANT:

A.A. ABDUL SABEER, , AGED 35 YEARS
SON OF ALI, ARAKKAL HOUSE, VENNALA P.O
ERNAKULAM 682028

R-R BY ADV. SRI.T.UZIYAD
R-R BY ADV. SMT.RAMEENA.P.K.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
01-04-2015, ALONG WITH RCR. 359/2013, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.Nos.358 & 359 of 2013

Dated this the 1st day of April, 2015

O R D E R

Antony Dominic, J.

1. These revision petitions are filed against the order passed by the Rent Control Appellate Authority, Ernakulam in IA.773/13 in RCA.78/12 and IA.772/13 in RCA.79/12.
2. Briefly stated, facts of the case are that the petitioners, being landlords of the premises occupied by the respondent tenant, filed RCP.Nos.80/10 and 85/10 on the file of the Rent Control Court, Ernakulam. Accepting the grounds under section 11 (8), the Rent Control Court ordered eviction. The tenant filed RCA.Nos.78/12 and 79/12 before the Rent Control Appellate Authority, Ernakulam. Along with the appeals, he also filed applications seeking condonation of 131 days delay in filing the appeals. Those applications were dismissed and consequently, the appeals were also dismissed. The tenant challenged those orders by filing RCR.Nos.410/12 and 411/12 before this Court. Those revisions were

disposed of by a common order dated 19.12.2012 where the delay was condoned subject to various conditions.

3. One of the conditions imposed by this Court was that the tenant shall deposit the arrears of rent, if any, before the Rent Control Court on or before 31.1.2013. There is no dispute between the parties that there was arrears due for the period from July to October, 2012. While the tenant contended that the arrears were paid directly to the landlords, the landlords submitted that they did not receive payments.

4. Complaining of the above, landlords filed IA.Nos.772/13 and 773/13 in RCA.79/12 and 78/12 respectively. The Appellate Authority enquired into the case of the landlords, examined PW1 and RW1 and also marked Exhibits A1 to A8 and B1 and B2. On that basis, the appellate authority passed order dated 23.8.2013, dismissing the IAs and restoring the appeals, by upholding the case of the tenant that he had discharged the rent for the period from July to

October, 2012. It is this order which is challenged in these revisions filed by the landlords.

5. Heard learned counsel for the petitioners and considered the submissions made.

6. As we have already stated, the controversy is whether the tenant has paid the arrears of rent for the period from July to October, 2012 and thus complied with the condition imposed by this Court.

7. Reading of the impugned order shows that in so far as the arrears of rent for July and August is concerned, the case of the tenant was that out of the total amount of ₹38,000/- due for the said two months, by Ext.X1 cheque issued on 27.8.2011, he had paid ₹36,000/- and the balance ₹2,000/- was paid in cash. Though this claim of the tenant was denied by the landlords, evidence before the appellate authority shows that the payment of ₹36,000/- was received by the landlords as mentioned in Ext.B1 accounts statement issued by Axis Bank. Though it is

contended before us that Ext.B1 is a self serving unsigned document, we note that no such complaint was raised at the time when the document was marked. That apart, PW1, one among the landlords, had signed Ext.X1 cheque and the appellate authority found that the name of PW1 is written on the back of Ext.X2 cheque and the driving licence of PW1 was attached to Ext.X5 cheque. It is true that the tenant did not produce any receipt issued by the landlord acknowledging payment of ₹36,000/-. However, on evidence, the appellate authority has found that there was no system of issuing receipt and that even according to PW1, receipts used to be issued only if the tenant makes a request in that behalf. It was in the light of this evidence, the appellate authority found that the tenant had paid ₹36,000/- as per Ext.X1 cheque.

8. In so far as the remaining payment of ₹2,000/- due towards the rent for July and August and ₹38,000/- due towards September and October are concerned, it was on the basis of the evidence adduced before the

appellate authority that it has accepted the case of the tenant. The payment of ₹2,000/- was substantiated by the oral evidence of RW1.

9. Similarly, in so far as payment of ₹38,000/- is concerned, here also no receipt acknowledging payment has been obtained or produced. The case canvassed by the tenant was probablised by production of Ext.B2 cheque which was allegedly returned by the landlord to the tenant on accepting payment in cash. Added to this, there was also oral evidence. All these indicate that the case canvassed by the tenant was a probable one and it was therefore that the appellate authority has accepted the case.

10. We do not find that the view taken by the appellate authority suffers from any infirmity for interference. We, therefore, confirm the order passed by the Rent Control Appellate Authority.

11. Be that as it may, fact remains that RCA.Nos.78/12 and 79/12 are pending before the Rent Control

Appellate Authority. Therefore, we direct that the appellate authority shall pass final orders in the appeal as expeditiously as possible, at any rate, within a period of four months of production of a copy of this judgment.

Revisions are ordered accordingly.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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/True copy/

PS to Judge